UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/810,455 | 03/27/2004 | Jacob N. Gust | 13911 | 9335 |

25542 7590 04/13/2006

CNH AMERICA LLC
INTELLECTUAL PROPERTY LAW DEPARTMENT
PO BOX 1895, M.S. 641
NEW HOLLAND, PA 17557

| EXAMINER | |
|---|---|
| NEWVILLE, TONI E | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3671 | |

DATE MAILED: 04/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/810,455 | GUST ET AL. | |
| | Examiner | Art Unit | |
| | Toni Newville | 3671 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *14 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1 and 3-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1, 3, and 11* is/are allowed.

6)☒ Claim(s) *4-10,12 and 13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Objections*

1. Claim 9 is objected to because of the following informalities: the limitation "the implement" recited in line 1 should be "the improvement". Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 4-10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlesser et. al., US 20030217537, in view of Houck, US 5715893, cited in previous office action.

Regarding claim 4, Schlesser discloses:

- A wheel-supported main frame (14) with first and second opposing lateral sides (Fig. 2) and adapted to be removably affixed to a tractor for

movement along the ground in a direction of travel (page 2 paragraph 32 lines 1-6);

- First and second elongated wings (16A, 16B) each with an inner end and an opposing outer end and each having a longitudinal axis generally perpendicular to the direction of travel and a center point along the longitudinal axis generally equidistant from the respective inner and outer ends (Fig. 1);
- A first elongated support arm (18A) pivotally affixed at one end to the first lateral side of the main frame and at the other end to the center point of the first wing (16A) (paragraph 38 lines 3-5);
- A second elongated support arm (18B) pivotally affixed at one end to the second lateral side of the main frame and at the other end to the center point of the second wing (paragraph 38 lines 3-5);
- First and second hydraulic cylinders (52) interconnecting the first wing (16A) and the main frame (14), and second wing (16B) and main frame (14), respectively, such that activation of the cylinders can raise the wings (16A, 16B), in unison if desired, to a transport position and lower the wings (16A, 16B) to a working position in contact with the ground (paragraph 40 lines 6-10), whereby they may be lowering and locked by preventing flow of hydraulic fluid into or out of the cylinders;

- The respective inner ends of said wings (16A, 16B) being closely adjacent to each other when in the working position, forming a generally continuous line across the width of said device (Fig. 1); and
- Both the first and second hydraulic cylinders (52) controlled by a hydraulic control system (paragraph 34 lines 8-9) and capable of being locked in place to hold the respective cylinders (52) in the working position whereby when in the working position, the wings float relative to the ground (paragraph 40 lines 6-10),
- Wherein the first and second wings (16A, 16B) are only attached to the wheel-supported main frame (14) by the first and second support arms (18A, 18B), respectively, so that inner and outer ends pivot freely only about the center point of each first and second wings (paragraph 16 lines 1-4).

Schlesser fails to disclose a plurality of seeders affixed to the first and second wings (16A, 16B), and generally regularly spaced along the longitudinal axis thereof.

Like Schlesser, Houck discloses a soil working device for attachment to a tractor, including first and second wings (Houck; 40, 41) containing tooling that are raised and lowered by hydraulic cylinders (Houck; 158, 159). Unlike Schlesser, Houck discloses that the tooling of the soil working device could

comprise seeders (column 6 line 65 – column 7 line 2), which could inherently be placed at regular spacing along the longitudinal axis of the wings (Houck; 40, 41).

Given the suggestion in Houck, it would have been obvious to one of ordinary skill in the art to include seeders on the wings (Schlesser; 16A, 16B) of Schlesser because seeding is a common procedure in the agricultural arts, and all types of soil working tools are generally mounted on tractor-mounted implements of similar design.

Regarding claim 5, Schlesser further discloses a hydraulic control system connected to the first and second hydraulic cylinders (52) to manage activation of the cylinders (paragraph 41 lines 1-5).

Regarding claim 6, Schlesser discloses, in an agricultural device having a main frame (14) with first and second lateral sides (Fig. 2) and first and second wings (16A, 16B) pivotably attached thereto and a hydraulic control system that pivots the wings between a raised transport position and a lowered operating position in contact with the ground (paragraph 40 lines 6-10), the improvement comprising:

- The first and second wings (16A, 16B), each with a longitudinal axis and a center point (50) along their respective longitudinal axes, the first and second wings (16A, 16B) only pivotably attached to respective lateral sides of the main frame (14) by a structure including first and second substantially

identical support arms (18A, 18B) each having a first end pivotably attached directly at the main frame (Fig. 2) and an opposing end pivotably attached directly at the respective wing (16A, 16B) at the center point (50) such that the wings (16A, 16B) float only about the center point pivotally attached directly at the second end (50) of the support arm (16A, 16B) relative to the ground (paragraph 16 lines 1-4); and

- Each wing (16A, 16B) having an inner end and an outer end (Fig. 2) such that in the working position the respective longitudinal axes of the two are generally aligned, with the inner ends closely adjacent to each other thereby forming a generally continuous line along the width of the device (Fig. 2).

Regarding the device being an agricultural seeder, the motivation for having the device of Schlesser comprise seeders is described above in the rejection of claim 4.

Regarding claim 7, the limitations therein are described above in the rejection of claims 1 and 6.

Regarding claim 8, the hydraulic control system includes a first hydraulic cylinder (52, left side of Fig. 2) interconnecting the first wing (16A) and the main frame such that activation of the first cylinder (52) can raise the first wing (16A) to a

transport position and lower the first wing (16A) to a working position in contact with the ground (paragraph 41 lines 10-15).

Regarding claim 9, the hydraulic control system includes a second hydraulic cylinder (52, right side of Fig. 2) interconnecting the second wing (16B) and the main frame such that activation of the first cylinder (52) can raise the second wing (16B) to a transport position and lower the second wing (16B) to a working position in contact with the ground (paragraph 41 lines 10-15).

Regarding claim 10, both first and second hydraulic cylinders (52) have a lock thereon (prevention of fluid from moving into or out of cylinders) to hold the respective cylinder in the working position whereby in the working position, the wings (16A, 16B) float relative to the ground (paragraph 16 lines 1-4).

Regarding claims 12 and 13, Schlesser further discloses the seeder of claims 4 and 6 having the first and second wings (16A, 16B) generally vertically aligned when in the transport position (Fig. 7).

***Allowable Subject Matter***

4. Claims 1, 3 and 11 are allowed.

***Response to Arguments***

5. Applicant's arguments and amendments, filed 2/14/2006, with respect to claim 1 and depending claims 3 and 11 have been fully considered and are persuasive. The rejection of claims 1 and 3 has been withdrawn.

6. Applicant's arguments filed 2/14/2006 with respect to claims 4-10, 12 and 13 have been fully considered but they are not persuasive.

Regarding the applicant's argument that Schlesser does not disclose a hydraulic system configured to lower the wings from a raised position for transport to a lowered operative position in contact with the ground, Schlesser specifically states in paragraph 41: "hydraulic cylinders 52...apply a selected lifting force to the distal end of each cutter head 16A and 16B". When the lifting force is applied, this becomes the "raised position for transport" described by the applicant. When the wings are in their lowered position, they are not in direct contact with the ground but are in contact with the ground via grass blades or other vegetation.

Regarding the applicant's argument that Schlesser does not disclose cylinders 52 being interconnected between wings 16A and 16B and main frame 14, Figure 2 in Schlesser clearly slows outer cylinders 52 being interconnected between wings 16A and 16B and mainframe 14 via arms 18A and 18B. The examiner

acknowledges that cylinders 52 do not directly connect the support arms 18A and 18B to the main frame 14.

Regarding the applicant's argument that Schlesser teaches away from a floating wing section when cylinders 52 are locked, Schlesser teaches top link 26 controls whether or not wings 16A and 16B float over ground surfaces, and the floating will occur regardless of what state cylinders 52 are in (paragraph 34 lines 1-13).

Regarding the applicant's argument that wings 16A and 16B float only about their center point, Fig. 2 in Schlesser shows center point 50 being at the center of each wing 16A and 16B and further discloses in paragraph 40 lines 12-15: "each pivot axis 50 is positioned approximately midway between the proximal end and distal end of each corresponding cutter head 16A and 16B to assist in balancing the respective cutter head." Fig. 2 also shows the wings 16A and 16B being connected to the main frame 14 only by first and second support arms 18A and 18B. Power shafts 40 and 42 and gearbox 38 connect directly to the tractor (Fig. 3).

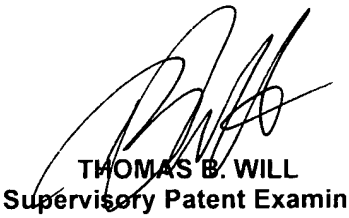
***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville
April 11, 2006



**THOMAS B. WILL**
**Supervisory Patent Examiner**
**Group 3600**